

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

Crl.MC.No. 1755 of 2007()

CRMP.2369/2007 of JUDL.MAGISTRATE OF FIRST CLASS-III, PUNALUR
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PETITIONER: COMPLAINANT

SHAJI SAM, S/O.D.SAMKUTTY,
CHARUVILA PUTHENVEEDU, MATHRA, PUNALUR,
KOLLAM.

BY ADV. SRI.C.RAJENDRAN

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.
2. SAJITH (A1), KANJIRAMVILA FINANCE,
EZHUKONE.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 13/06/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J.

Crl.M.C.No.1755 of 2007

Dated this the 13th day of June 2007

O R D E R

The petitioner is the complainant and his complaint was preferred before the learned Judicial First Class Magistrate Court-III, Punalur. In the complaint, he has raised allegations inter alia under Section 364A I.P.C, an offence triable exclusively by the court of Session as per the schedule of the Code of criminal procedure.

2. When the learned Magistrate received the complaint, the learned Magistrate chose not to make a reference under Section 156(3) Cr.P.C. Instead, the learned Magistrate proceeded to examine the complainant. After examination of the complainant, the learned Magistrate appears to have felt that an investigation under Section 202 Cr.P.C is essential and that interests of justice cannot be met except by such an enquiry/investigation. Accordingly, the matter was referred to the police for conducting an investigation under Section 202 Cr.P.C.

3. The petitioner/complainant has, at this stage, rushed to this court with the prayer that the proceedings undertaken by the learned Magistrate so far, may be set aside and there may be a direction to refer the matter to the police under Section 156(3) Cr.P.C. The crux of the allegations is that the first accused and some other unknown persons had indulged in the culpable conduct of kidnapping the complainant, confining him and demanding ransom. The learned counsel for the petitioner contends that the decision by the learned Magistrate to get the investigation conducted by the police officer under Section 202 Cr.P.C is in conflict with the clear mandate of proviso (a) of Section 202(1) Cr.P.C. The learned Magistrate does not have that option to refer the matter for investigation by a police officer under Section 202 Cr.P.C when the offence is triable exclusively by a court of Session. In the instant case, the offences alleged include the offence punishable under Section 364 A I.P.C which is triable exclusively by a court of Session. In these circumstances, it is prayed that the order directing the conduct of an investigation by the police officer may be set aside.

4. I find merit in that prayer. The report of the learned Magistrate was called for and I find no justification whatsoever

for making a reference for investigation in view of the clear and unambiguous bar under proviso (a) to Section 202(1) Cr.P.C.

5. The next question is what further orders can be passed in the matter. The learned Magistrate has already made the reference and once the reference is set aside, the learned Magistrate can be directed only to record the evidence of the complainant and all his witnesses on oath under the proviso to Section 202(2) Cr.P.C. The learned counsel for the petitioner submits that adopting that course may not serve the interests of justice in this case as even the complainant is not able to specify the unknown persons who were involved in the commission of the offence. The learned counsel for the petitioner points out that in these circumstances, this was an eminently fit case where the learned Magistrate should have referred the matter to the police under Section 156(3) Cr.P.C. The counsel hence prays that all the proceedings initiated by the learned Magistrate on receipt of the complaint till now may be set aside and there may be a direction to the learned Magistrate to refer the matter to the police under Section 156(3) Cr.P.C.

6. In the complaint filed, the petitioner/complainant had made a specific request that reference may be made to the police

under Section 156(3) Cr.P.C. This court, in Superintendent of Police, CBI vs. State of Kerala [2005(3) KLT 823 , has already held that the complainant has no option or right to request for a reference under Section 156(3) Cr.P.C. but the jurisdiction/discretion of the court to make such a reference is not fettered or taken away merely because the complainant has chosen to make such a prayer in the complaint. I am satisfied, in the facts and circumstances of this case that the proper course which the learned Magistrate must have followed was to make a reference to the police under Section 156(3) Cr.P.C. Such course alone can serve the ends of justice.

7. In the result, this Criminal Miscellaneous Case is allowed. All steps taken by the learned Magistrate after receipt of the complaint by the complainant are set aside and it is directed that the learned Magistrate shall refer the complaint to the police under Section 156(3) Cr.P.C.

8. This Criminal Miscellaneous Case is accordingly allowed to the above extent.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007